

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1991 of 1996

with

SPECIAL CIVIL APPLICATION NO. 1992 OF 1996

with

SPECIAL CIVIL APPLICATION NO. 1993 OF 1996

with

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SPECIAL CIVIL APPLICATIONNO 1995 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN

and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed

to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution

of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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KANUBHAI CHHOTABHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

SPL.CIVIL APPLICATIONS NO.1991/96 & 1992/96

MR AKIL KURESHI for Petitioners

MR P.G.DESAI, G.P.for Respondents

SPL.CIVIL APPLICATIONS NO.1993/96, 1994/96 & 1995/96

MR AKIL KURESHI for the petitioners  
MR U.A.TRIVEDI, A.G.P. for Respondents.

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CORAM : MR.JUSTICE K.G.BALAKRISHNAN and

MR.JUSTICE J.M.PANCHAL

Date of decision: 18/03/98

ORAL JUDGEMENT

(Per : J.M.Panchal,J.) :-

As common questions of facts and law arise in these petitions, they are disposed of by this common judgment.

By means of filing these petitions under Articles 226 & 227 of the Constitution, the petitioners have prayed to quash and set aside order dated February 7, 1995 passed by the Special Land Acquisition Officer, Mahi Canal, Nadiad, District : Kheda, rejecting application dated May 20, 1991 submitted by the petitioners under section 28A of the Land Acquisition Act, 1894 on the ground that the petitioners had not raised any objection when award was passed by the Special Land Acquisition Officer. The petitioners have also prayed to direct the respondents to pay compensation to the petitioners on the basis of judgment and award dated 11.3.1991 rendered by the learned 2nd Joint District Judge, Nadiad in L.A.Q.no. 27/83, along with all other benefits including solatium, interest etc.

2. The lands belonging to the petitioners are situated in village Gorel, Taluka Borsad, District : Kheda. The State of Gujarat had issued preliminary notification under section 4 of the Land Acquisition Act, 1894 ("Act" for short) on August 13, 1981 for acquiring lands belonging to the petitioners as well as of others. The declaration under section 6 of the Act was made by the State Government on August 26, 1982. Thereafter by award dated December 31, 1982, Land Acquisition Officer had granted compensation to those whose lands were acquired. The Special Land Acquisition Officer had assessed market value of the land at the rate of Rs.100/per Are. A copy of award dated December 31, 1982 passed by the Special Land Acquisition Officer is produced by the petitioners at Annexure-A to Special Civil Application no.1991 of 1996. One of the land-holders i.e. Jethabhai Motilal Patel sought

reference before the District Court against the award passed by the Special Land Acquisition Officer and the District Court enhanced the amount of compensation payable to him. A copy of award passed by the District Court in the case of Jethabhai Motilal Patel is produced by the petitioners at Annexure-B to Special Civil Application no.1991 of 1996. The petitioners have averred that other persons whose lands were acquired, had also sought reference before the District Court and in their cases also, amount of compensation was enhanced by the District Court. The petitioners were aggrieved by the award passed by the Special Land Acquisition Officer. As the District Court had granted some of the land-holders enhanced amount of compensation, the petitioners whose lands were covered by the same notification issued under section 4 of the Act, made an application to the Special Land Acquisition Officer on May 20, 1991 and requested Special Land Acquisition Officer to redetermine the amount of compensation payable to them in the light of judgment rendered by the Reference Court. The application submitted by the petitioners was rejected by the Special Land Acquisition Officer by order dated February 7, 1995 on the ground that the petitioners had not raised any objection at the time when award was passed by the Special Land Acquisition Officer. This order has given rise to the present petition. A copy of order dated February 7, 1995 passed by the Special Land Acquisition Officer is produced by the petitioners at Annexure-C to Special Civil Application no. 1991 of 1996.

3. Learned Counsel for the petitioners submitted that it was not necessary for the petitioners to raise any objection at the time when the award for payment of compensation was passed by the Special Land Acquisition Officer and as the petitioners were aggrieved by the award passed by the Special Land Acquisition Officer, they were entitled to file an application under section 28A of the Act requesting Special Land Acquisition Officer to redetermine the amount of compensation payable to the petitioners in the light of judgment rendered by the District Court in references which were made to the District Court at the instance of other land-holders whose lands were also acquired by notification dated August 13, 1981, which was issued under section 4 of the Act. Under the circumstances, learned Counsel for the petitioners pleaded that the petitions deserve to be allowed. In support of his submissions, learned Counsel placed reliance on the decisions rendered in the cases of (1) BABUARAM AND OTHERS v. STATE OF U.P. AND ANOTHER, (1995) 2 SCC 689, (2) UNION OF INDIA AND ANOTHER v.

PRADEEP KUMARI AND OTHERS, A.I.R. 1995 S.C. 2259, and (3) HUKAM CHAND AND OTHERS v. STATE OF HARYANA AND OTHERS, (1996)5 SCC 164.

4. Mr. U.A.Trivedi, learned Assistant Government Pleader for the respondents submitted that a just order has been passed by the respondents and, therefore, Court should not interfere with the impugned decision.

5. It is not in dispute that lands belonging to the petitioners and lands belonging to those, who had sought reference against the award passed by the Special Land Acquisition Officer, were acquired by the State Government vide notification dated August 13, 1981 issued under section 4 of the Act. It is also not in dispute that District Court has enhanced compensation in cases of those land-holders who had sought reference against award passed by the Special Land Acquisition Officer. Section 28A of the Act provides for redetermination of amount of compensation on the basis of the award of the Court. When an award has been passed by the Special Land Acquisition Officer under section 11 of the Act and the Court has allowed an applicant any amount of compensation in excess of the amount awarded by the Special Land Acquisition Officer, the persons interested in all the other lands covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Special Land Acquisition Officer, are entitled to file an application before Special Land Acquisition Officer with a request to him to redetermine the amount of compensation payable to them on the basis of the amount of compensation awarded by the Reference Court. Therefore, the petitioners were entitled to file application before Special Land Acquisition Officer requesting him to redetermine the amount of compensation payable to them in the light of judgment rendered by the Reference Court.

In the case of BABUARAM AND OTHERS (Supra), the Supreme Court has interpreted section 28A of the Act and held that a person interested becomes aggrieved, when for other lands covered by the same notification under section 4(1) of the Act, the Court awards compensation in excess of the compensation awarded under section 11 to him for his land and to others for their land and such aggrieved persons who had not made an application to the Collector under section 18 earlier, become entitled to invoke section 28-A. What is emphasised by the Supreme Court in the said decision is that the right to an aggrieved person under section 28-A(1) arises only when the reference court grants compensation in excess of the

amount awarded under section 11. The Supreme Court has further observed that expression "person aggrieved" in section 28-A(1) is not confined to those who received compensation under protest, but failed to apply for reference and would apply to a case of person who has not raised any objection at the time when the award was made by the Special Land Acquisition Officer under section 11 of the Act. The same principle has been reiterated by the Supreme Court in the case of UNION OF INDIA AND ANOTHER (Supra). The Supreme Court in the said decision has highlighted that the object underlying the enactment of Section 28-A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the civil court under section 18 of the Act. The Supreme Court has observed that this is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek redetermination once any of them has obtained order for payment of higher compensation from the reference court under section 18. Again, in the case of HUKAM CHAND AND OTHERS (Supra), the Supreme Court has held that the aggrieved persons, who had received compensation without protest, but did not avail of the remedy of reference under section 18, if one of the claimants arising from the same notification published under section 4(1) of the Act, had the benefit of enhanced compensation from the Reference Court, the non-applicant has been empowered under section 28-A(1) to avail of the remedy under Section 28-A by an application made within three months from the date of the award of the Reference Court to seek enhanced compensation.

6. In view of the authoritative pronouncement of law by Apex Court in the above-referred to decisions, there is no manner of doubt that the petitioners were entitled to move an application under section 28-A of the Act after the compensation was enhanced in cases of other land owners by the Reference Court whose lands were also acquired by the same notification and it was not necessary for the petitioners to raise any objection when award was passed by the Special Land Acquisition Officer. Therefore, we are of the opinion that the Special Land Acquisition Officer was not justified at all in rejecting the applications submitted by the petitioners under section 28A of the Act on the ground that the petitioners had not raised any objection at the time of receiving the amount of compensation awarded by the Special Land Acquisition Act. Hence, the impugned orders cannot be sustained and all the petitions deserve to be allowed.

For the foregoing reasons, the petitions succeed. The order dated February 7, 1995 passed by the Special Land Acquisition Officer rejecting the application dated May 20, 1991 submitted by the petitioners under section 28-A of the Act is hereby set aside and quashed. Respondent no.2 is directed to process the said application in accordance with law as early as possible and preferably within two months from the date of receipt of writ in each petition. Rule is made absolute in each petition, with no order as to costs.

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